

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8151 OF 2014

GORAKHNAT VISHWNATH NALKAR
VERSUS
THE EDUCATION OFFICER (SECONDARY),
ZILLA PARISHAD, AURANGABAD AND OTHERS

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Advocate for Petitioner : Shri Kolhare S.R.
AGP for Respondent 1 : Shri Badakh V.S.
Advocate for Respondents 2 & 3 : Shri Tele A.B.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 19, 2016

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PER COURT :-

1. Considering the contentions of the learned Advocate for the petitioner and the learned Advocate for the respondent / management as were recorded in the order dated 25.8.2015, the controversy is as regards two copies of the service book. One copy is said to be the original and the other copy is said to be the original copy belonging to the petitioner / employee.

2. Shri Kolhare has produced a hard-bound service book and claims to be the original copy of the employee. Shri Tele has produced another copy claiming it to be the original. Both these documents were before the Tribunal. The respondent / management did not dispute the service book produced by the petitioner.

3. Shri Kolhare insists that the signatures of the Headmaster on both the copies of the service book are identical. Shri Tele insists that the signatures do not tally and the management is disputing the signatures of the Headmaster on the copy produced by the petitioner. Both the learned Advocates agree that the truthfulness of the service books would decide as to whether the petitioner was confirmed in employment after completing the period of probation and was continued in employment. Even today, the petitioner claims to be in employment.

4. Both the learned Advocates concede that neither of the parties made a request before the School Tribunal to refer the documents to the handwriting expert, so as to resolve this highly contentious issue. Both agree that the two service books need to be referred to the handwriting expert and evidence to that effect needs to be brought on record.

5. It is apparent that both the parties have raised disputed issues before this Court in this petition. None made an effort before the Tribunal to seek the opinion of the handwriting expert on the signatures of the headmaster. Had that exercise been done during the pendency of the appeal before the Tribunal, the Tribunal would have been assisted in properly adjudicating over the appeal.

6. For the above reason and considering the fact that disputed questions cannot be decided within the writ jurisdiction of this Court, ends of justice would be met by remanding appeal No.121 of 2002 to the School Tribunal, Aurangabad so as to enable both the sides to produce the original service books on record. The School Tribunal can, thereafter, refer the two documents for the opinion of the handwriting expert by following the due procedure of law.

7. As such, this petition is partly allowed and the impugned judgment of the School Tribunal, dated 23.1.2013 is set aside only for the reason as recorded herein above.

8. Appeal No.121 of 2002 stands remitted to the School Tribunal at Aurangabad. Both the litigating sides shall appear before the School Tribunal on 8.2.2016 and shall produce the original copies of the service books, as have been shown to this Court and which have been returned back to the respective Advocates.

9. Considering the controversy recorded above, the School Tribunal shall refer the service books to the handwriting experts with regard to the signatures of the Headmaster appearing in the said books. After the report of the handwriting expert is received and copies of which are supplied to the litigating sides, the Tribunal shall

proceed to decide the appeal afresh and on its merits.

(RAVINDRA V. GHUGE, J.)

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